

LIBRARY OF CONGRESS

Copyright Office

37 CFR, Part 201

[Docket No. 98-11]

Designation of Agent to Receive Notification of Claimed Infringement

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing interim regulations governing the designation by online service providers of agents to receive notifications of claimed infringement. The regulations are issued on an interim basis without opportunity for comment due to the necessity of having regulations in place immediately upon enactment of the Online Copyright Infringement Liability Limitation Act. These regulations will be replaced by more complete regulations to be promulgated following notice and opportunity for comment.

EFFECTIVE DATE: The interim regulations are effective **[Insert date of publication in FEDERAL REGISTER]**.

ADDRESSES: An original and fifteen copies of the comments shall be delivered to: Office of the General Counsel, Copyright Office, LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C., or mailed to: David Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Jennifer L. Hall, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1998, President Clinton signed into law the Digital Millennium Copyright Act, Pub. L. 105-__ (1998). Title II of the Act (subtitled the "Online Copyright Infringement Liability Limitation Act") amended chapter 5 of the copyright law, title 17 United States Code, to provide limitations for service provider liability relating to material online. Specifically, new subsection 512(c) provides limitations on service provider liability with respect to material residing, at the direction of a user, on a system or network that the service provider controls or operates, if the conditions set forth in subsection 512(c)(1) are satisfied.

The limitations on liability established in subsection 512(c) apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement by providing contact information for that agent (1) to the Copyright Office and (2) through the service provider's publicly accessible website. 17 U.S.C. 512(c)(2). The required information includes: (A) the name, address, telephone number, and electronic mail address of the agent; and (B) other contact information that the Register of Copyrights deems appropriate. *Id.* The Register of Copyrights shall maintain a current directory of designated agents, and make the listing available to the public for inspection, and may require payment of a fee by service providers to cover the costs of maintaining the directory. *Id.*

Because the Online Copyright Infringement Liability Limitation Act was effective on its date of enactment, and because online service providers may wish immediately to designate agents to receive notification of claimed infringement in order to meet the requirements of section 512(c)(2), the Copyright Office herein establishes interim regulations governing the designation of agents to receive notification of claimed infringement. The Office finds, for good cause, that notice and public procedure for issuance of these interim regulations would be impracticable, because of the necessity of having a procedure for designation of agents in place immediately upon the enactment of the Online Copyright Infringement Liability Limitation Act. These interim regulations will be effective immediately, but the Office will publish a notice of proposed rulemaking

within the next several weeks seeking comments on more comprehensive final regulations governing the designation of agents to receive notification of claimed infringement. Interim designations filed pursuant to these interim regulations will be valid until the effective date of the final regulations. At that time, service providers wishing to invoke section 512(c)(2) will have to file new designations that satisfy the requirements of the final regulations, which will include the payment of the fee required under the final regulations.

Under section 512(c)(2), a service provider designates an agent by providing information required by Copyright Office regulations both on its publicly available website and in a filing with the Copyright Office. The requirements for such designation during the interim period prior to issuance of final regulations are governed by the rules set forth in the new interim regulations set forth in 37 CFR 201.38. During the interim period the Office will not provide printed forms for filing such interim designations. In order to satisfy section 512(c)(2), online service providers must file a document entitled "Interim Designation of Agent to Receive Notifications of Claimed Infringement" which contains all the information required by section 512(c)(2). Section 512(c)(2) provides that the Office may require payment of a fee by service providers to cover the costs of maintaining a directory of agents. The Office concludes that during the interim period, the appropriate fee for the filing of an interim designation is \$20.00, the fee currently charged for recordation of a document. See 17 U.S.C. 708(a)(4). The fee that will be charged for filing a Designation of Agent to Receive Notifications of Claimed Infringement under the final regulations most likely will be higher.

During the interim period before final regulations are promulgated, each Interim Declaration may be filed only on behalf of a single service provider. For purposes of these interim regulations, related companies (e.g., parents and subsidiaries) are considered separate service providers who would file separate Interim Designations. When it considers final regulations, the Office will solicit comments as to whether related companies (e.g., parent and subsidiary companies) should be permitted to file a single Designation of Agent to Receive Notifications of Claimed Infringement.

List of Subjects in 37 CFR Part 201

Copyright

INTERIM REGULATIONS

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is amended to read as follows:

PART 201 -- GENERAL PROVISIONS

1. The authority for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.38 is added to read as follows:

§ 201.38 Designation of Agent to Receive Notification of Claimed Infringement

(a) *General.* This section prescribes interim rules under which service providers may provide the Copyright Office with designations of agents to receive notification of claimed infringement under section 512(c)(2) of title 17 of the United States Code, as amended. These interim rules shall remain in effect until more comprehensive rules have been promulgated following a notice of proposed rulemaking and receipt of public comments.

(b) *Forms.* The Copyright Office does not provide printed forms for filing an Interim Designation of Agent to Receive Notification of Claimed Infringement.

(c) *Content.* An "Interim Designation of Agent to Receive Notification of Claimed Infringement" shall be identified as such by prominent caption or heading, and shall include the following information with respect to a single service provider:

- (1) The full legal name and address of the service provider;
- (2) All names under which the service provider is doing business;
- (3) The name of the agent designated to receive notification of claimed infringement;
- (4) The full address, including a specific number and street name or rural route, of the agent designated

to receive notification of claimed infringement. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location;

(5) The telephone number, facsimile number, and electronic mail address of the agent designated to receive notification of claimed infringement.

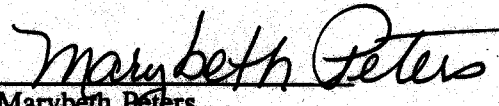
(d) *Signature.* The Interim Designation of Agent to Receive Notification of Claimed Infringement shall include the signature of the appropriate officer or representative of the service provider designating the agent. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Notice, and by the date of signature.

(e) *Filing.* A service provider may file the Interim Designation of Agent to Receive Notification of Claimed Infringement with the Public Information Office of the Copyright Office, Room LM-401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, S.E., Washington, D.C., during normal business hours, 9:00 am to 5:00 pm. If mailed, the Interim Designation should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Each designation shall be accompanied by a filing fee of \$20.00. Designations and amendments will be posted online on the Copyright Office's website (<http://www.loc.gov/copyright>).

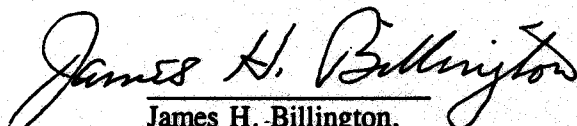
(f) *Amendments.* In the event of a change in the information reported in an Interim Designation of Agent to Receive Notification of Claimed Infringement, a service provider shall file with the Public Information Office of the Copyright Office an amended Interim Designation of Agent to Receive Notification of Claimed Infringement, containing the current information required by section 201.38(c). The amended Interim Designation shall be signed in accordance with the requirements of section 201.38(d) and shall be accompanied by a fee of \$20.00.

(g) *Termination and dissolution.* If a service provider terminates its operations, the entity shall notify the Copyright Office by certified or registered mail.

DATED: October 28, 1998


Marybeth Peters,
Register of Copyrights.

APPROVED:


James H. Billington,
The Librarian of Congress.